94-1676

No. 94-16776

Supreme Court, U.S.
FILED
MAY 12
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

STATE OF NORTH CAROLINA,
Petitioner,

v.

ALAN HOWARD PENDLETON,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE NORTH CAROLINA SUPREME COURT

Martha A. Geer
COUNSEL OF RECORD
PATTERSON, HARKAVY
& LAWRENCE
200 W. Morgan St.
P. O. Box 27927
Raleigh, NC 27611
Telephone (919) 755-1812

Phillip A. Fusco
LYTCH, TART,
WILLIS & FUSCO
602 W. Broad St.
P. O. Box 157
Dunn, NC 28335
Telephone (919) 892-5388

Gerald W. Hayes, Jr.
STEWART & HAYES, P.A.
804 W. Broad Street
Dunn, NC 28335
Telephone (919) 892-2178

4/P

QUESTION PRESENTED

May a State delegate its law enforcement power to a private educational institution committed "to the lordship of Christ over every area of life [and] wholehearted obedience to moral law as set forth in the Old and New Testaments" by officially granting that institution's private security force the same powers of arrest as municipal and county police officers?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

STATUTORY PROVISIONS 1

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 8

I. THIS CASE -- INVOLVING SIMPLY A STATE'S DELEGATION OF ITS POLICE POWER TO A RELIGIOUS INSTITUTION -- DOES NOT PRESENT AN APPROPRIATE VEHICLE TO RECONSIDER THE *LEMON* TEST 9

II. THE NORTH CAROLINA SUPREME COURT PROPERLY APPLIED *LARKIN* 12

III. THE NORTH CAROLINA SUPREME COURT'S DECISION WILL HAVE ONLY LIMITED RAMIFICATIONS 17

IV. THERE IS NO REASON TO DEFER RULING IN THIS CASE PENDING A DECISION IN *ROSENBERGER V. RECTOR & VISITORS OF UNIVERSITY OF VIRGINIA* 18

CONCLUSION 20

ADDENDUM 21

TABLE OF AUTHORITIES

Page

Board of Education of Kiryas Joel Village School District v. Grumet, 512 U.S. __, 129 L.Ed.2d 546 (1994) 10, 11

County of Allegheny v. Greater Pittsburgh ACLU, 492 U.S. 573 (1989) 10, 13

Graver Tank and Manufacturing Company v. Linde Air Products Company, 336 U.S. 271 (1949) 15

Hunt v. McNair, 413 U.S. 734 (1973) 17

Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982) 8, 10-14, 17

Lemon v. Kurtzman, 403 U.S. 602 (1971) . . 8-11, 15

Rogers v. Lodge, 458 U.S. 613 (1982) 15

Rosenberger v. Rector & Visitors of University of Virginia, 18 F.3d 269 (4th Cir.), cert. granted, ___ U.S. ___, 115 S. Ct. 417 (1994) 11, 18, 19

School District of the City of Grand Rapids v. Ball, 473 U.S. 373 (1985) 15

State v. Mahaley, 332 N.C. 583, 423 S.E.2d 58 (1992). 14

Tilton v. Richardson, 403 U.S. 627 (1971) 17

Zobrest v. Catalina Foothills School District, 509 U.S. ___, 125 L.Ed.2d 1 (1993) 14

STATUTES AND CONSTITUTIONAL PROVISIONS

N.C. Gen. Stat. § 74A 1, 2, 8, 18

U.S. Const. Amend. I . . . . . passim

OPINIONS BELOW

The petition for writ of certiorari omits the order of the superior court filed May 1, 1992, setting forth the court's findings of fact and conclusions of law. The findings of fact formed a basis for the decision of the North Carolina Supreme Court. The superior court's order is reproduced in the Appendix to this Brief at A1-A14.

STATUTORY PROVISIONS

N.C. Gen. Stat. § 74A-2 provides with respect to any police officers of an educational institution commissioned under § 74A-1:

> (b) Such policemen, while in the performance of the duties of their employment, shall severally possess all the powers of municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions . . . .

STATEMENT OF THE CASE

In 1991, Alan Howard Pendleton was arrested by a Campbell University police officer for driving while impaired. Although Campbell University is a private institution, its campus security force had been commissioned by the North Carolina Attorney General under the State's Company Police Act, N.C. Gen. Stat. §

74A-1 et seq. (since repealed and replaced by N.C. Gen. Stat. § 74E-1 et seq.).

By virtue of this commission, police officers employed by Campbell University are granted "all the powers of municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions". N.C. Gen. Stat. § 74A-2(b). The geographical scope of their jurisdiction includes Campbell University's property and any public road or highway passing through or immediately adjoining its property. N.C. Gen. Stat. § 74A-2(b), (e)(1). In addition, the University is free to enter into an agreement with the County to extend the jurisdiction of the University's police force throughout the County. N.C. Gen. Stat. § 74A-2(e)(3).

In the superior court, Pendleton moved to dismiss the charge on the grounds that the commissioning of Campbell University's police officers impermissibly delegated State law enforcement power to a religious institution, in violation of the First Amendment's Establishment Clause. After a hearing at which both the State and Pendleton had the opportunity to offer evidence, but only Pendleton did, the superior court granted Pendleton's motion, issuing an order with detailed findings of fact and conclusions of law.

Based on the evidence, the court found that Campbell University is a Baptist institution, whose governing Board of Trustees is elected by the Baptist State Convention. (FOF 9, 14; A3, 6)[1] Each student attending Campbell must, as a graduation requirement, complete Religion 101 -- a basic Bible course with special emphasis on the birth and development of the Israelite nation, the life and times of Jesus, and the emergence and expansion of the early church. (FOF 12, 13; A3) Students must also take one additional religion course of their choice; all of the available elective courses, however, focus on the Judeo-Christian religious tradition. (FOF 12, 13; A3-4)

In addition, the court found, each student must abide by a Code of Ethics arising out of the school's official statement of purpose. (FOF 13; A4-5) This Code of Ethics, set forth in the Campbell University Bulletin 1990-92, provides in part:

> The basic principles which guide the development of Christian character and govern Christian behavior are to be found in

---

[1] "FOF __" and "COL __" refer to the superior court's findings of fact and conclusions of law reprinted in the Appendix to this brief. "Bulletin __" refers to the Campbell University Bulletin 1990-92 offered as an exhibit below. "Tr. __" refers to the transcript of the hearing on defendant's motion to dismiss. "Pet. A__" refers to the appendix to the petition; "A__" refers to the appendix to this brief.

> the Scriptures. Moral law is the gift of God and is fully revealed in the teachings of Jesus Christ.
>
> The student, by virtue of his enrollment, agrees to abide by the rules and moral precepts which govern the University community. Because of the University's commitment to the lordship of Christ over every area of life, wholehearted obedience to moral law as set forth in the Old and New Testaments and exemplified in the life of Christ applies to every member of the University community, regardless of position.

(FOF 13; A4) The student must "uphold at all times and in all places, both on- and off-campus, the University's statement of purpose." (FOF 13; A5)

This Code of Ethics is not merely advisory. While enforcing the laws of North Carolina, the campus police force also investigates and reports violations of the Code of Ethics to the Dean of Student Life. The Dean is responsible for administration of the University's disciplinary system, including discipline -- such as expulsion -- for violations of the Code of Ethics. (FOF 30-31, A11; Tr. 4-6)

In addition to the provisions referenced by the trial court, the Code of Ethics explains that "over the years, university and church have stood as partners" and that

"[t]he University plays an important role in the mission of the church and the mission of the Kingdom of God on earth". (Bulletin at 47) Accordingly, the University "is committed to teaching students to think with Christian values as their basic guidelines." (Bulletin at 47) The Code emphasizes that "it is expected that those who attend the University will be sympathetic to the school's stated purposes." (Bulletin at 47)

These "stated purposes" are also set forth in the Campbell University Bulletin 1990-92. The "Statement of Purpose" declares initially that the University "is committed to helping students develop an integrated Christian personality." (Bulletin at 10) It explains further that the school's purpose "arises out of three basic theological and Biblical presuppositions: learning is appointed and conserved by God as essential to the fulfillment of human destiny; in Christ, all things consist and find ultimate unity; and the Kingdom of God in this world is rooted and grounded in Christian community." (Bulletin at 10)

The superior court -- quoting from this Statement of Purpose -- found that Campbell University's mission was to present Christian principles to students, both in and out of the classroom, and foster their application in daily life. (FOF 15, A6; Bulletin at 10) Specifically, the University strives to:

> Provide students with the option of a Christian worldview;
>
> Bring the word of God, mind of Christ, and power of the Spirit to bear in developing moral courage, social sensitivity, and ethical responsibility that will inspire a productive and faithful maturation as individuals and as citizens;
>
> * * *
>
> Affirm the University's commitment to the belief that truth is never one-dimensional but in wholeness is revelatory, subjective, and transcendent as well as empirical, objective, and rational, and that all truth finds its unity in the mind of Christ.

(FOF 16, A6-7) The Statement of Purpose concludes by confirming that education and faith should be intertwined: "This university sees the human vocation as living by faith under grace, with no conflict between the life of faith and the life of inquiry." (FOF 16, A8; Bulletin at 11)

Based on its findings regarding the Code of Ethics and the school's purpose -- findings to which the State did not except on appeal -- the trial court concluded that "Campbell's religious purpose is inextricably intertwined with its secular activities and it unabashedly attempts to proselytize and indoctrinate its students." (FOF 17, A8) The State objected only to this ultimate conclusion.

The superior court then proceeded to examine the nature of Campbell's police force. The arresting officer was one of eight full-time police officers employed exclusively by Campbell University. (FOF 23, 26; A10) The chief of the Campbell police force was Captain Ricky Symmonds. Captain Symmonds was an employee of the Sheriff's Department on assignment to Campbell. According to the State, he receives a paycheck from Harnett County, but Campbell reimburses the County for his salary. Despite being a member of the Harnett County Sheriff's Department, Captain Symmonds' immediate and exclusive supervisor was the Dean of Student Life at Campbell University -- the same Dean who enforces the University's Code of Ethics by administering discipline for violations of the Code reported by the campus police. (FOF 31; A11) The trial court concluded that Captain Symmonds' dual role as police chief for Campbell University's police force and deputy sheriff of Harnett County "is an impermissible intrusion and fusion of Church and State, each into the affairs of the other". (FOF 32; A11-12)

Based on the unconstitutional delegation of police power to the arresting officer, the superior court concluded that defendant's arrest was unconstitutional. (COL 5; A13) The North Carolina Court of Appeals reversed. On further appeal, the North Carolina Supreme Court affirmed the superior court's decision.

The North Carolina Supreme Court pointed out that the State's failure to except to the pertinent findings of the superior court meant that they were binding on the court. It held, based on those findings, that the trial court did not err in concluding, for purposes of the Establishment Clause, that Campbell University is a "religious institution" within the meaning of Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982). Accordingly, "the State's delegation of its police power to Campbell University under former Chapter 74A was -- based upon the uncontested findings in this case -- a delegation of an important discretionary power to a religious institution" and Chapter 74, as applied in this case, violated the Establishment Clause as construed in Larkin. (Pet. A18)

The court stressed that its holding in this case was limited: "We do not consider or decide the status of Campbell University for any other purpose or any other case." The decision below was "based upon the unique facts as found by the Superior Court from the particular uncontroverted evidence presented, which findings of facts were not excepted to by the State in this case." (Pet. A20)

REASONS FOR DENYING THE WRIT

The sole reason offered by the State to justify this Court's review is that the North Carolina Supreme Court's ruling presents this Court with an opportunity to reconsider its opinion in Lemon v. Kurtzman, 403 U.S. 602 (1971) --

even though Lemon played only a small role in the decision below. Instead, the North Carolina Supreme Court applied a principle as to which the courts have not quarrelled: a State may not delegate an important discretionary governmental power to a religious institution.

More specifically, the North Carolina Supreme Court concluded simply that a State may not delegate its law enforcement authority to a religious institution. There may be no religious police.

Despite the State's hyperbole, the court's opinion, if left standing, will have only limited ramifications within the State. The decision affects only religious institutions and not religiously affiliated schools. Moreover, the loss to religious institutions is not profound. They merely lose the ability to have their own privately employed security officers endowed with the State's power to arrest.

I. THIS CASE -- INVOLVING SIMPLY A STATE'S DELEGATION OF ITS POLICE POWER TO A RELIGIOUS INSTITUTION -- DOES NOT PRESENT AN APPROPRIATE VEHICLE TO RECONSIDER THE *LEMON* TEST.

The State's petition does not rely on any of the customary considerations justifying a grant of certiorari. The State cannot point to any conflict between the decision below and the decision of any other court. The State does not identify any decision of this Court with which the

North Carolina Supreme Court opinion conflicts. Nor can the State contend that the governing law -- relating to the State's ability to delegate its powers to religious institutions -- is unsettled.

Instead, the State implores this Court to grant certiorari in order to overturn its decision in Lemon v. Kurtzman, 403 U.S. 602 (1971). Lemon is, however, of only tangential relevance to the decision below. The North Carolina Supreme Court based its ruling on Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982), not Lemon.

In Larkin, this Court held: "The Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions." 459 U.S. at 127. The State has not identified a single opinion in which this principle has been challenged. In fact, this Court continues to recite this holding approvingly. See, e.g., Board of Education of Kiryas Joel Village School District v. Grumet, 512 U.S. __, 129 L.Ed.2d 546, 557 (1994); County of Allegheny v. Greater Pittsburgh ACLU, 492 U.S. 573, 591 (1989).

Chief Justice Rehnquist, in his dissent to Larkin, confirmed that this non-controversial principle stands independently of Lemon. He wrote:

> Surely we do not need a three-part test to decide whether the grant of actual legislative power to churches is within the proscription of the Establishment Clause of the First and Fourteenth Amendments. The question in this case is not whether such a statute would be unconstitutional, but whether § 16C is such a statute.

459 U.S. at 129. See also Board of Education of Kiryas Joel Village School District v. Grumet, 512 U.S. __, 129 L.Ed.2d 546, 572 (1994) (O'Connor, J., concurring) (advocating, instead of Lemon, different categories of Establishment Clause cases: "Government delegations of power to religious bodies may make up yet another category . . . . [A]n equally even-handed law that gives each institution discretionary power over [alcohol] sales may not be [valid]."). In short, even if the Court were to overturn Lemon, the holding in this case would stand unscarred.

Regardless, if the Court wishes now to reconsider the Lemon decision, it need not grant certiorari in this case to do so. The Court has already heard argument in Rosenberger v. Rector & Visitors of University of Virginia, 18 F.3d 269 (4th Cir.), cert. granted, ___ U.S. ___, 115 S. Ct. 417 (1994), in which it has been urged that Lemon should be overruled. The opportunity already exists; grant of certiorari here is unnecessary.

II. THE NORTH CAROLINA SUPREME COURT PROPERLY APPLIED *LARKIN*.

By detailing the dissent below and giving short-shrift to the majority's analysis, the State appears to complain that the North Carolina Supreme Court misapplied Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982). This claim is readily refuted by Larkin itself.

Chief Justice Burger wrote in Larkin:

> Here that "wall" [between church and state] is substantially breached by vesting discretionary governmental powers in religious bodies. . . . [T]he statute, by delegating a governmental power to religious institutions, inescapably implicates the Establishment Clause.
>
> * * *
>
> The Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions.

459 U.S. at 123, 127. The North Carolina Supreme Court articulated a concise and accurate summary of that holding:

> In Larkin, the Supreme Court established a clear rule which this Court is required to follow in cases arising under the Establishment Clause: A state may not

> delegate an important discretionary governmental power to a religious institution or share such power with a religious institution.

(Pet. A11)

The State and the dissent below contend that the majority erred by refusing to limit the application of Larkin to situations in which the State delegates power to a church, as opposed to a religious institution. The very language of Larkin forecloses this position: it precludes delegation to "religious bodies" and "religious institutions". 459 U.S. at 123, 127. This language is scarcely surprising; this Court has never confined its Establishment Clause jurisprudence to churches, as opposed to religious institutions. See also County of Allegheny v. Greater Pittsburgh ACLU, 492 U.S. 573, 591 (1989) (government "may not delegate a governmental power to a religious institution").

The North Carolina Supreme Court then proceeded to apply the Larkin rule in a straightforward manner. The court noted that the parties did not dispute that the statute delegated the State's police or law enforcement power to Campbell University. As for the court's conclusion that such law enforcement authority is an important, discretionary governmental power, the State now concedes, "Nobody quarrels with this." (Pet. at 9)

Thus, it is undisputed that the State has delegated an important, discretionary governmental power to Campbell University. Consequently, under Larkin, the only remaining question at issue is whether Campbell University constitutes a religious institution.

As the North Carolina Supreme Court noted, for purposes of the Establishment Clause, a school is a sectarian religious institution when the secular education and advancement of religious values or beliefs are inextricably intertwined. Zobrest v. Catalina Foothills School District, 509 U.S. ___, 125 L.Ed.2d 1, 7 & n.1 (1993). Following this test to the letter, the North Carolina Supreme Court concluded: "where a trial court has found that an institution's secular purposes and religious mission are 'inextricably intertwined' -- as the Superior Court found from uncontroverted and substantial evidence in this case -- we have no choice but to treat it as a religious institution for First Amendment purposes." (Pet. A19)[2]

Since the courts applied the correct test to the findings of fact, the State must be quarreling with the findings made by the superior court and concurred in by the state Supreme Court. Yet, "this Court has frequently

---

[2]A superior court's findings of fact are binding on the North Carolina Supreme Court if supported by substantial evidence. State v. Mahaley, 332 N.C. 583, 423 S.E.2d 58 (1992).

noted its reluctance to disturb findings of fact concurred in by two lower courts." Rogers v. Lodge, 458 U.S. 613, 623 (1982). "A Court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." Graver Tank and Manufacturing Company v. Linde Air Products Company, 336 U.S. 271, 275 (1949).

No "obvious and exceptional showing of error" exists. The evidence upon which the North Carolina Superior and Supreme Courts relied parallels the evidence found sufficient in Lemon v. Kurtzman, 403 U.S. 602 (1971) and School District of the City of Grand Rapids v. Ball, 473 U.S. 373 (1985), to characterize a school as a religious institution. In Lemon, the Court pointed to the school's Handbook of School Regulations, which provided that religious education was not confined to formal courses or single subject areas; the Handbook urged teachers to stimulate interest in religious work. 403 U.S. at 618. Similarly, in City of Grand Rapids, the Court relied upon the Parent Handbook and a policy statement, which declared that the goal of the schools was a God-oriented environment which would permeate the total educational program. 473 U.S. at 379.

Here, the Campbell University Bulletin declared that the school's purpose as a university is to help "students develop an integrated Christian personality" and to that end, "[b]oth in and out of the classroom, the University endeavors to present Christian principles to students and to foster their application in daily life," (Bulletin at 10) -- a purpose not disputed by the State.[3] Even more importantly, the Code of Ethics binding on all Campbell students requires "wholehearted obedience to moral law as set forth in the Old and New Testaments and exemplified in the life of Christ." This mandate applies to every member of the University community, presumably including the police officers. Indeed, while authorized to enforce state law through arrests, these officers simultaneously are required to report violations of this Code of Ethics to the Dean of Student Life for the meting out of discipline.

The State does not -- and cannot -- demonstrate any "obvious or exceptional error" in connection with the conclusion of the courts below that this evidence constitutes an intertwining of religious and secular functions. Since

---

[3] "It would be a strange State's attorney indeed who objected to the truth." (Pet. at 8 n.8)

the North Carolina Supreme Court applied Larkin appropriately, there is no reason to grant the petition.[4]

III. THE NORTH CAROLINA SUPREME COURT'S DECISION WILL HAVE ONLY LIMITED RAMIFICATIONS.

In its ardor to attract this Court's attention, the State sounds the alarm: according to the State, the North Carolina Supreme Court's decision will strip all religiously affiliated institutions of higher learning of adequate police protection. (Pet. at 15) The sky is hardly falling. The State's melodramatic predictions are at best overstated and at worst disingenuous.

The holding below has no impact on "religiously affiliated institutions". It applies only to "religious institutions" or "pervasively sectarian" institutions within the meaning of the Establishment Clause. A determination whether a particular institution is "pervasively sectarian" will depend upon the specific facts regarding that institution. Indeed, by the very terms of the North Carolina Supreme Court's opinion, Campbell University is

---

[4]Neither Hunt v. McNair, 413 U.S. 734 (1973) nor Tilton v. Richardson, 403 U.S. 627 (1971), upon which the State relies, are controlling. In Tilton, the plaintiff did not even claim that the schools at issue were sectarian. In Hunt, the plaintiff offered evidence only of the structure of the school; no evidence existed of the school's mission or purpose, such as was presented here.

free to establish in any other case or context that it is not a religious institution: "We do not consider or decide the status of Campbell University for any other purpose or any other case." (Pet. A20)

Even "religious institutions" will not be deprived of police protection. As the Supreme Court noted, "[t]here are methods other than those formerly set out in Chapter 74A for providing for the safety and protection of college campuses". (Pet. A20-21) Police protection will be provided by State and local governments, as it has been and should be. Further, nothing in the court's decision would preclude a campus from having a private security force; most do. The security force simply will not have the authority to arrest. Campus officers will proceed as do other private security forces -- they will call the municipal or county law enforcement departments after detaining the offender.

IV. THERE IS NO REASON TO DEFER RULING IN THIS CASE PENDING A DECISION IN *ROSENBERGER V. RECTOR & VISITORS OF UNIVERSITY OF VIRGINIA*.

In the alternative, the State requests that the Court defer ruling in this case until after it decides Rosenberger v. Rector & Visitors of University of Virginia, 18 F.3d 269 (4th Cir.), cert. granted, ___ U.S. ___, 115 S. Ct. 417 (1994). The State does not, however, explain in what

way a decision in Rosenberger will resolve the issues raised by the opinion below.

The question presented in Rosenberger involves the interaction of the First Amendment's Establishment Clause with its Free Speech and Free Press Clauses. The University of Virginia refused to allow a religious student publication to participate in a student activities fund. Any decision in Rosenberger will not, therefore, address whether the State may delegate a governmental power to a religious institution. It will not delineate when such a delegation has occurred. Nor will it define what constitutes a religious institution. In short, resolution of Rosenberger will not affect any of the determinations made in this case.

CONCLUSION

For all the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

Martha A. Geer, COUNSEL OF RECORD
PATTERSON, HARKAVY & LAWRENCE
200 W. Morgan Street
Post Office Box 27927
Raleigh, North Carolina 27611
Telephone: (919) 755-1812

Phillip A. Fusco
LYTCH, TART, WILLIS & FUSCO
602 W. Broad Street
Post Office Box 157
Dunn, North Carolina 28335
Telephone: (919) 892-5388

Gerald W. Hayes, Jr.
STEWART & HAYES, P.A.
804 W. Broad Street
Dunn, North Carolina 28335
Telephone: (919) 892-2178

ADDENDUM

State of North Carolina	In the General Court of Justice Superior Court Division
Harnett County	91CRS3735
State of North Carolina)	FILED MAY 1, 1992
)	
vs.)	ORDER
)	
Alan Howard Pendleton)	

THIS MATTER COMING ON TO BE HEARD before the undersigned Judge Presiding at the February 13, 1992, Criminal Session of Harnett County, North Carolina, with William Huggins appearing for the State and Gerald Hayes, Jr. and Phillip A. Fusco appearing for the Defendant, and the Court having taken the matter under advisement, and the parties having consented to entry of this Order out-of-session and out-of-county and out-of-division; from the evidence presented, the Court makes the following Findings of Fact by more than a preponderance of the evidence:

1. On April 12, 1991, Defendant, Alan Howard Pendleton, was enrolled as a student at Campbell University and resided in a campus dormitory.

2. Around 1:05 AM, he was stopped by Officer Reed Jones, a member of the Campbell University police force, on Highway 1572 which is on the campus of Campbell University.

3. Officer Jones saw Defendant sitting at a stop sign on State Road 1521. State Road 1521 is not on the campus of Campbell University and does not adjoin it. Defendant pulled out in front of the officer as his vehicle approached the intersection of State Road 1532 and Main Street in Buies Creek.

4. Defendant had his high beam headlights on. Officer Jones turned around and followed Defendant back to campus.

5. Defendant crossed across the center line several times and as he turned onto Highway 1570, an unmarked paved road, he was weaving back and forth in his lane of travel.

6. Defendant was arrested by Officer Jones and charged with the offense of Driving While Impaired, a violation of the N. C. criminal law. He blew .11 on the breathalyzer.

7. On June 21, 1991, Defendant was convicted in District Court of Driving While Impaired, Level 5. Defendant filed Notice of Appeal to Superior Court.

8. On September 3, 1991, Defendant filed a Motion to Dismiss the charges against him on the basis that N.C.G.S. Chapter 74A-1 is unconstitutional because it violates the First Amendment of the United States Constitution and

Article I, Section 13 and 19 of the North Carolina Constitution in that it: (1) permits Campbell University to exercise authority of the State by granting police powers to a church-owned private university; and (2) enables the State to intervene in the church agency and vice-versa in violation of the doctrine of separation of Church and State.

9. Campbell University is a Baptist University located in Buies Creek, Harnett County, North Carolina. It was founded in January 5, 1887.

10. In 1925, the school's property was deeded to the North Carolina Baptist Convention.

11. Campbell University is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to award Associate, Batchelor's, Master's, Education Specialist and Doctoral degrees.

12. Each student that attends Campbell University's undergraduate school is required to take Religion 101 and any additional religion course.

13. Religion 101 is a basic Bible course with special emphasis on the birth and development of the Israelite nation, the life and time of Jesus and the emergence and expansion of the early church.

All of the elective religious courses are centered around the Judeo-Christian religion. Campbell University's students are required to adhere to a Code of Ethics which arises out of the institution's statement of purpose:

> The basic principles which guide the development of Christian character and govern Christian behavior are to be found in the Scriptures. Moral law is the gift of God and is fully revealed in the teachings of Jesus Christ.
>
> The student, by virtue of his enrollment, agrees to abide by the rules and moral precepts which govern the University community. Because of the University's commitment to the lordship of Christ over every area of life, wholehearted obedience to moral law as set forth in the Old and New Testaments and exemplified in the life of Christ applies to every member of the University community, regardless of position.
>
> While the Bible does not provide a specific teaching regarding all social practices, its emphasis on general principles is unmistakable, particularly in circumstances where lack of self-restraint would be harmful or offensive to others. Out of these general principles come certain concrete expectations which should be viewed not negatively but as practical guidelines for conduct and for a productive way of life.

To uphold at all times and in all places, both on- and off-campus, the University's statement of purpose.

To protect the property rights of others from theft, damage, or misuse.

To adhere to all college policies and regulations, including the rules governing the use of facilities, housing on and off the campus, and campus organizations.

To obey, respect, and uphold the law of the land.

To refrain from the possession, use, or distribution of alcoholic beverages and drugs.

To maintain a standard of dress which insures neatness, cleanliness, and appropriateness of attire.

At all times to exhibit good taste, decency and restraint, refraining from disorderly conduct and indecent, profane, or obscene expression.

To be honest in all behavior, never cheating, plagiarizing, or knowingly giving false information.

To abstain from any sexual relations outside the bonds of marriage.

To exemplify high principles of honor, integrity, and morality, and to help others fulfill their obligations under this code.

14. The Baptist State Convention of North Carolina recommends members of the Board of Trustees to the Baptist State Convention for election.

15. The legally designated authority of Campbell University rests in its Board of Trustees. Both in and out of the classroom Campbell University endeavors to present Christian principles to students and to foster their application to daily life.

16. Campbell University's mission is to:

> Provide students with the option of a Christian worldview;
>
> Bring the word of God, mind of Christ, and power of the Spirit to bear in developing moral courage, social sensitivity, and ethical responsibility that will inspire a productive and faithful maturation as individuals and as citizens;
>
> Transfer from one generation to the next the vast body of knowledge and values accumulated over the ages;
>
> Encourage creativity, imagination, and rigor in the use of intellectual skills;
>
> Affirm the University's commitment to the belief that truth is never one-dimensional but in wholeness is revelatory, subjective, and transcendent as well

as empirical, objective, and rational, and that all truth finds its unity in the mind of Christ;

Frame University teaching in the context of a liberal arts education seeking to free persons to live more abundantly and securely in an ever-changing social order;

Foster stewardship in nurturing the gifts of the mind and in developing aesthetic sensibilities;

Equip students with superior vocational skills, productive insights, and professional integrity;

Provide a community of learning that is committed to the pursuit, discovery, and dissemination of knowledge to serve the region as well as national and international communities;

Prepare students for purposeful lives through undergraduate, graduate, and professional instruction including terminal graduate and professional programs;

Provide services to the general community through research efforts, continuing education, and cultural programs;

Cooperate with other educational institutions for the advancement of mankind;

> This university sees the human vocation as living by faith under grace, with no conflict between the life of faith and the life of inquiry.

17. Campbell's religious purpose is inextricably intertwined with its secular activities and it unabashedly attempts to proselytize and indoctrinate its students.

Exception No. 1

18. N.C.G.S. Chapter 74A-1 provides in pertinent part:

> Any educational institution or hospital, whether State or private, or any other State institution, public utility company, construction company, manufacturing company, auction company, incorporated security patrols or corporations engaged in providing security or protection services for persons or property, may apply to the Attorney General to commission such persons as the institution, corporation or company may designate to act as policemen for it. The Attorney General upon such application may appoint such persons or so many of them as he may deem proper to be such policemen, and shall issue to the person so appointed a commission to act as such policemen. Nothing contained in the provisions of this section shall have the effect to relieve any such company or corporation from any civil liability for the acts of such policemen, in exercising or attempting to exercise the powers conferred by this Chapter.

19. Upon taking their oath, policemen, acting in the performance of their duties, have all the powers of municipal and county police officers to arrest for felonies, or misdemeanors and to charge for infractions:

> (1) Upon property owned by or in the possession and control of their respective employers; or
>
> (2) Upon property owned by or in the possession and control of any person or persons who shall have contracted with their employer or employers to provide security for protective services for such property; or
>
> (3) Upon any other premises while in hot pursuit of any person or persons for any offense committed upon property vested in subdivisions (1) and (2) above.

20. N.C.G.S. Chapter 74A-2(e) gives policemen of private colleges and universities to exercise their police powers upon any portion of a public road or highway passing through or immediately adjacent to the college's or university's property. Its purpose is to assist the educational institutions in maintaining the general welfare of its students.

21. By agreement between the University's Board of Trustees and the governing board of the municipality, the University's police may exercise their police power throughout the municipality.

22. By agreement between the University's Board of Trustees and the governing board of the county, the University's police power may extend county-wide.

23. Campbell University has a police force consisting of eight full-time police officers.

24. Ricky Symmonds is Captain of the Campbell University police force. Captain Symmonds is actually employed by the Harnett County Sheriff's Department. His salary is paid by the Harnett County Sheriff's Department. **Exception No. 2**

25. The office of the Campbell police force is located on Campbell's campus.

26. All of the police officers, except Captain Symmonds, are paid by Campbell University. **Exception No. 3**

27. N.C.G.S. Chapter 74A-4 provides that:

> The compensation of such police shall be paid by the companies for which the policemen are

respectively appointed, as may be agreed on between them.

28. As part of the police officers' duties on the Campbell University police force, they enforce the criminal and traffic laws of the State of North Carolina.

29. Campbell University police officers exercise their police power on campus and on any highway adjacent to property owned by Campbell University. There are two main highways that run through Campbell -- Highway 421 and the highway that goes to Coats and Benson.

30. The Campbell University police officer also enforces the rules and regulations set out in the student handbook of Campbell University which includes: (a) no drinking on campus; and (b) no men in the women's dorm; as well as Campbell's religious based Code of Ethics.

Exception No. 4

31. Captain Ricky Symmonds' immediate supervisor is the Dean of Student Life at Campbell University and the Dean has complete supervisory power over him. The Dean of Student Life is responsible for the administration of the University's disciplinary system, including its Code of Ethics.

32. Captain Ricky Symmonds' serving as police chief of Campbell University police force while simultaneously serving as a Deputy Sheriff of Harnett County is an impermissible intrusion and fusion of Church and State, each into the affairs of the other, prohibited by the First Amendment and Article I, Sections 13 and 19 of the North Carolina Constitution, and it also violated N.C.G.S. 74A-4. **Exception No. 5**

33. N.C.G.S. Chapter 74A-1 et seq has a direct and primary effect of advancing religion, as applied in this case. **Exception No. 6**

BASED ON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

1. N.C.G.S. Chapter 74A-1 et seq, which allow church-owned Campbell University to enforce the police power of North Carolina, violates the First Amendment of the United States Constitution and Article I, Section 13 and 19 of the North Carolina Constitution in that it impermissibly aids and establishes a religion. **Exception No. 7**

2. Campbell University's exercise of the police powers of the State is an excessive entanglement of the State and Church. **Exception No. 8**

3. Captain Ricky Symmonds' service as Captain of the Campbell University police force while simultaneously serving as a sworn officer of the Harnett County Sheriff's Department is an excessive entanglement prohibited by the First Amendment of the United States Constitution and Article I, Section 13 and 19 of the North Carolina Constitution. **Exception No. 9**

4. N.C.G.S. 74A-1 et seq, constitutes an impermissible delegation of authority to a religious institution as it is an establishment of religion. **Exception No. 10**

5. Defendant's arrest was an unconstitutional arrest. **Exception No. 11**

6. The breathalyzer result obtained as evidence against the defendant is obtained as a direct and primary result of the unconstitutional arrest. **Exception No. 12**

7. The breathalyzer result may not be used in evidence against the defendant. **Exception No. 13**

8. Defendant's Motion to Dismiss should be allowed. **Exception No. 14**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant's Motion to Dismiss should be and the same is hereby ALLOWED.

This the 24th day of April, 1992.

/s/ Steve Allen
Steve Allen
Presiding Superior Court Judge